Docket No. AUS920011005US1 *PATENT*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Gusler et al.**	§	Group Art Unit: **2421**
	§	
Serial No. **10/004,926**	§	Examiner: **Salce, Jason P.**
	§	
Filed: **December 5, 2001**	§	Confirmation No.: **9814**
	§	
For: **Efficiently Identifying Television**	§	
Stations in a User Friendly	§	
Environment		

.37945

PATENT TRADEMARK OFFICE
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Commissioner for Patents
P.O. Box 1450
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REPLY BRIEF (37 C.F.R. 41.41)

This Reply Brief is submitted in response to the Examiner's Answer mailed on April 28, 2009.

No fees are believed to be required to file a Reply Brief. If any fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 09-0457.

RESPONSE TO EXAMINER'S ANSWER

In the Examiner's Answer, the Examiner responded to certain arguments made by Appellants in their principal brief. The Examiner's new argument is set forth in Section (10), beginning on page 9, of the Examiner's Answer. Appellants reply below to those specific arguments made by the Examiner in Section (10) of the Examiner's Answer.

A.   Whether *Burnhouse* and *Arsenault* disclose the limitation of claim 5, "wherein if said broadcast signals include said tags then the method further comprises the step of: comparing said tags with a list of one or more classification associated with said plurality of television stations".
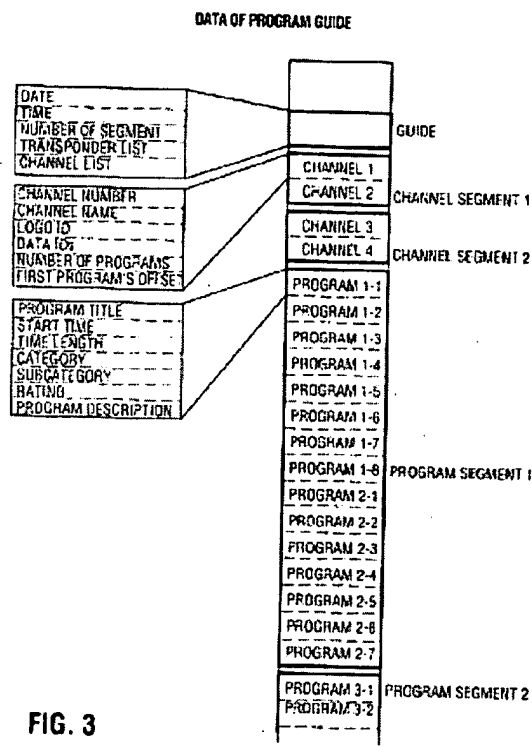
The Examiner states:

> Applicant further notes that Burnhouse fails to teach these limitations because Burnhouse fails to teach comparing said tags and that parsing is not the same as comparing. The Examiner respectfully disagrees. Burnhouse discloses receiving program guide data that includes category and subcategory information (see Figures 3-4), which upon receipt, stores the program guide data in a database including pointers to the category and subcategory information (see Paragraph 0036). Once the program guide data is stored, the viewer may access the program guide data for display in an electronic program guide illustrated in Figures 9-1 0. Once the electronic program guides of Figures 9 and 10 are accessed, the system makes a comparison with the stored television programs in the database to determine which programs to display to viewer based on the category and subcategory tags stored in the database (see Paragraph 0062). Therefore, Burnhouse clearly teaches comparing said tags with a list of one or more classifications associated with said plurality of television stations, otherwise the system would not know which television programs to displays after a category and subcategory has been selected.

Examiner's Answer, page 10.

The Examiner does not address Appellants' specific arguments, but rather summarizes the argument as stating that "Burnhouse fails to teach comparing said tags and that parsing is not the same as comparing." Appellants' Brief stated, in relevant part, that "[t]here is no language in the cited passages that teaches comparing tags with a list of one or more classifications." (Emphasis in original). Thus, Appellants interpret the Examiner's response as an attempt to show that Burnhouse does contain language that teaches "comparing tags with a list of one or more

classifications." The Examiner's attempt fails because Burnhouse has no such explicit language, and the limitation cannot be shown to necessarily follow from the disclosure of Burnhouse.

The Examiner makes new references to Burnhouse FIGS. 3, 4, 9, and 10 and paragraph [0062]. Burnhouse FIGS. 3 is set forth below.

DATA OF PROGRAM GUIDE

| DATE |
| TIME |
| NUMBER OF SEGMENT |
| TRANSPONDER LIST |
| CHANNEL LIST |

GUIDE

| CHANNEL 1 |
| CHANNEL 2 | CHANNEL SEGMENT 1
| CHANNEL NUMBER |
| CHANNEL NAME |
| LOGO ID |
| DATA ID |
| NUMBER OF PROGRAMS |
| FIRST PROGRAM'S OFFSET |

| CHANNEL 3 |
| CHANNEL 4 | CHANNEL SEGMENT 2

| PROGRAM TITLE |
| START TIME |
| TIME LENGTH |
| CATEGORY |
| SUBCATEGORY |
| RATING |
| PROGRAM DESCRIPTION |

| PROGRAM 1-1 |
| PROGRAM 1-2 |
| PROGRAM 1-3 |
| PROGRAM 1-4 |
| PROGRAM 1-5 |
| PROGRAM 1-6 |
| PROGRAM 1-7 |
| PROGRAM 1-8 | PROGRAM SEGMENT 1
| PROGRAM 2-1 |
| PROGRAM 2-2 |
| PROGRAM 2-3 |
| PROGRAM 2-4 |
| PROGRAM 2-5 |
| PROGRAM 2-6 |
| PROGRAM 2-7 |
| PROGRAM 3-1 | PROGRAM SEGMENT 2
| PROGRAM 3-2 |

FIG. 3

Burnhouse, [0034], lines 1-8 states "[t]he program data may include a variety of data related to the program such as program title, start time of the program, time length of the program, program category such as movies, news, sports, etc., program subcategory such as drama, horror, children's movies or baseball, basketball, football for the sports category, the movie rating and program description that provides a detailed description of the program." Assuming, arguendo, that Burnhouse's categories and subcategories are construed as a classification, Burnhouse still does not disclose a list for comparison. Rather, as explained in Appellants' main brief, the data is associated with a pointer, as shown in FIG. 4. Burnhouse, [0036], lines 1-6 states "[a]s noted above, the CPU 29 generates a table of pointers 401 to the EPG stored in the memory" and "[t]he

table 401 is used for changing the order of channels or programs according to the information to be presented in the guide to the user. FIG. 4 is set forth below.
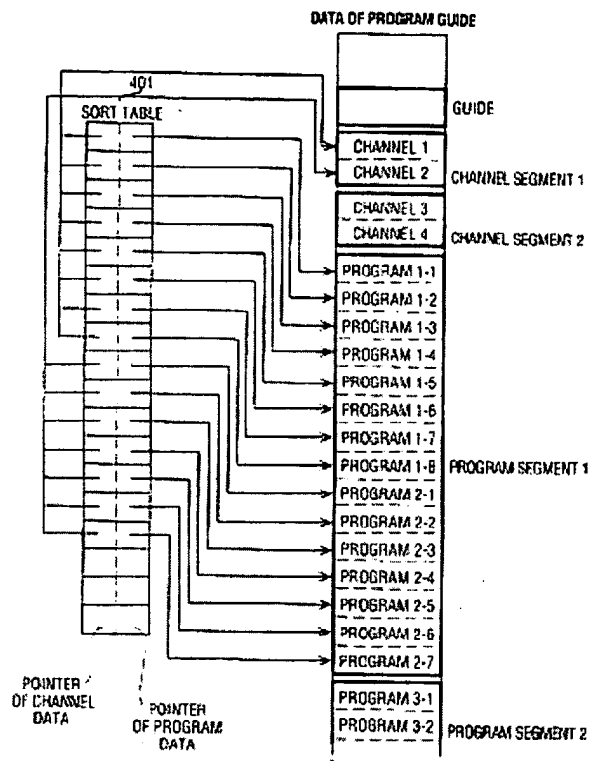
DATA OF PROGRAM GUIDE

401

SORT TABLE

GUIDE

| CHANNEL 1 |
| CHANNEL 2 | CHANNEL SEGMENT 1

| CHANNEL 3 |
| CHANNEL 4 | CHANNEL SEGMENT 2

PROGRAM 1-1
PROGRAM 1-2
PROGRAM 1-3
PROGRAM 1-4
PROGRAM 1-5
PROGRAM 1-6
PROGRAM 1-7
PROGRAM 1-8   PROGRAM SEGMENT 1
PROGRAM 2-1
PROGRAM 2-2
PROGRAM 2-3
PROGRAM 2-4
PROGRAM 2-5
PROGRAM 2-6
PROGRAM 2-7

POINTER
OF CHANNEL
DATA   POINTER
           OF PROGRAM
              DATA

PROGRAM 3-1
PROGRAM 3-2   PROGRAM SEGMENT 2

FIG. 4

But the Examiner made this same argument in the Final Office Action, and the failure of Burnhouse was addressed on page 5 of Appellants' principal brief.

The Examiner goes further in the Answer, by citing Burnhouse FIGS. 9 and 10. However, as explained in Burnhouse, [0061] and [0062], a user can use the interface of FIGS. 9 and 10 to select a category or subcategory to display an information display of movies related to a selected category or subcategory. FIGS. 9 and 10 are set forth below:
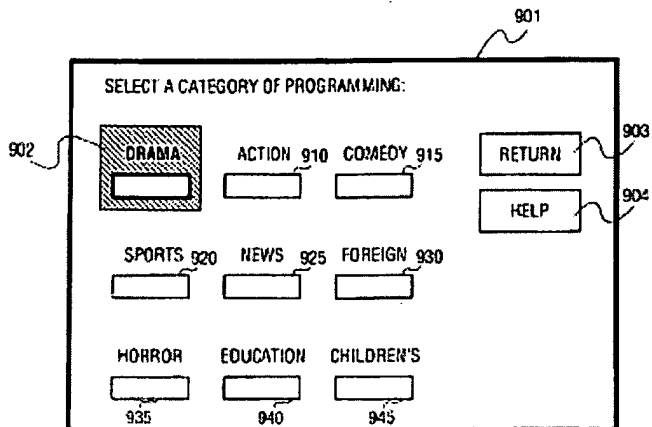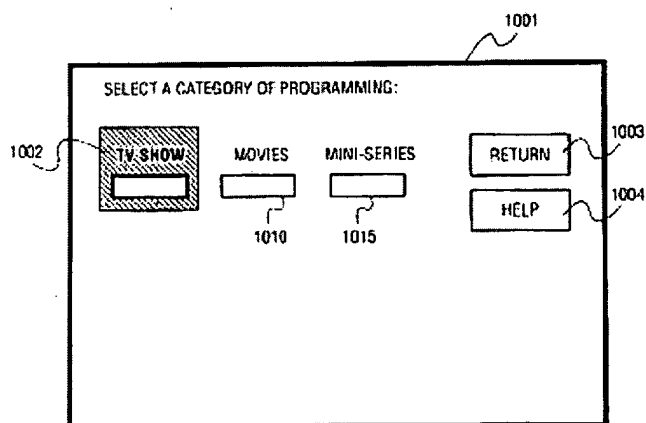
FIG. 9

FIG. 10

A selection on the interface will result in a display of information through the pointers of FIG. 4. As stated in the principal Brief, [t]he subcategory information is obtained from table 401, as admitted by the Examiner." The new citations to Burnhouse do not change the facts from those discussed in the principal brief. There is still no comparison being made.

Thus, the Examiner has not shown that a comparison to a list has been made explicitly.

The Examiner states:

> Once the electronic program guides of Figures 9 and 10 are accessed, the system makes a comparison with the stored television programs in the database to determine which programs to display to viewer based on the category and subcategory tags stored in the database (see Paragraph 0062).

Examiner's Answer, page 10-11.

But paragraph [0062] does not disclose what the Examiner stated. Rather, paragraph [0062] states:

> [0062] A user may select anyone of the sub-categories to display all the programs related to that sub-category. For example a user may select Drama Movies to display an information display of movies related to drama.

Thus, there is no explicit disclosure, and only an inherency argument could be made. While the Examiner has not argued that the comparison is inherent, Appellants will show that such an argument could not be made. The Examiner's argument relies on possibility and probability. Specifically, the Examiner states:

> Therefore, Burnhouse clearly teaches comparing said tags with a list of one or more classifications associated with said plurality of television stations, otherwise the system would not know which television programs to display after a category and subcategory has been selected.

Examiner's Answer, page 11.

The Examiner's own words indicate that the disclosure is not explicit and must be inferred-- "otherwise the system would not know which television programs to display." Such reasoning cannot support an inherency argument. The fact that a certain result or characteristic <u>may</u> occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). "To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may

result from a given set of circumstances is not sufficient.' " *In re Robertson*, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) "In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic <u>necessarily</u> flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Since the Examiner cannot show that the disclosed limitation necessarily follows from the disclosure of Burnhouse, the limitation cannot be shown to be inherent in the disclosure.

Since Burnhouse and Arsenault fail to disclose the limitation, explicitly or inherently, the rejection of claim 5 should be overturned.

B.   Whether *Burnhouse* and *Arsenault* disclose the limitation of claim 5, "wherein if there are differences between said list of one or more classifications associated with said plurality of television stations and said tags then the method further comprises the steps of: updating said list of one or more classifications in a database associated with said plurality of television stations to become a new base set stored in said database; and displaying one or more folders associated with one or more classifications for said plurality of television stations on said display according to said new base set after said new base set has been processed".

The Examiner states:

> Applicant specifically notes that Arsenault only teaches that if there are no records currently stored, then a control circuit may create a new content record and a new content record is not created if there are differences between a list of classifications associated with television stations and the tags. The Examiner respectfully disagrees.
> Arsenault discloses that content records 100 (the EPG data) is stored as it is received (see Column 7, Line 15) where Figure 4 updates the EPG database as the EPG data is received. Arsenault further teaches that updating the EPG database includes comparing the tags to the data in the EPG database and determining if there are differences between the list of one or more classification (see Column 7, Lines 15-46). Arsenault further discloses that if there are differences, updating said list of one or more classifications in a database associated with said plurality of television stations to become a new base set stored in said database (see Column 7, Lines 52-55 for creating a new record if there are differences with previously stored EPG data and the received EPG data). Therefore, Arsenault clearly discloses updating the EPG database with a new base set if there are differences (no matching content record found) between a list of classifications associated with television stations and the tags (the EPG data already stored in the database and the incoming content records received).

Examiner's Answer, page 11-12.

Appellants set forth in detail in their principal brief the reasons that the cited art failed to disclose the limitation set forth above. The Examiner responds by again citing to Arsenault. Appellants submit that Arsenault does not disclose what the Examiner states. The citations made by the Examiner do not explicitly disclose the claim limitation. The entire portion of Arsenault referenced by the Examiner is set forth below:

> Content records 100 may be stored as they are received. A flowchart of a program that can be implemented by the local receiver unit (IRD) 36 to store content records 100 in accordance with the teachings of the present invention is illustrated in FIG. 4. The programmed steps may be performed by a control circuit such as a microprocessor 58. Once the program is initiated the control circuit determines if the current message is associated with a new title 102 (block 120). For example, if there are no content records 100 currently stored and a message is received to store the content "John Doe" as an "Actor" under "Credits" for the referring program ID=31 (see FIG. 5), then the control circuit would create a new title 102 (e.g., an array of linked lists or a linked list of linked lists) called "Credits" (block 122). Subsequently, the control circuit would insert a new label 104 (e.g., a head node) called "Actor" into the "Credits" title (block 124). Further, the control circuit would create a new content record 100 containing "John Doe" (block 126) and the control circuit would link the content record 100 to the "Actor" label 104 and the referencing object 108 (block 128) containing a reference to ID=31. Because this is the first content record 100 under this newly created label, linking preferably comprises setting a next content pointer 110 in the label head node to point to the content record 100 and setting a reference pointer 106 in the content record 100 to point to a referencing object 108 (e.g., 40 ID=31). Persons of ordinary skill in the art will readily appreciate that an actor's name (e.g., "John Doe") could be used as a label (e.g., head node) to allow easier retrieval of data by name (e.g., "All movies with John Doe"). A preferred embodiment of using an actor's name as a label is shown in FIG. 10 and discussed in detail below. In the event that the title 102 already exists (block 120), the control circuit then checks if the content record 100 to be saved is associated with a new label 104 (block 130). If the current content record 100 is not associated with a new label 104, the control circuit checks if it is associated with new content (block 132). If the current content record 100 is not associated with a new label 104, but is new content, then the control circuit creates a new content record 100 (block 126) and links it (block 128). However, if this is not the first content record 100 under this label, linking preferably comprises setting a next content pointer 110 in the last content record 100 in this label's link list to point to the new content record 100. As before, the control circuits sets a reference pointer 106 in the content record 100 to point to a referencing object 108 (e.g., ID=42). An example of the

results is illustrated in FIG. 6. Alternatively, the new content record 100 could be inserted somewhere in the existing link list (e.g., alphabetical order).

Arsenault, col. 7, lines 15-64.

As can be seen by studying the above cited portion of Arsenault, Arsenault is silent as to an explicit disclosure of the claim element. Furthermore, Arsenault cannot provide an inherent disclosure because, individually or in combination with Burnhouse, the cited art can only be used to argue possibilities. The cited art cannot show that the claim limitation necessarily follows from the teachings of the references.

Since the limitation is not explicitly nor inherently shown in the cited art, the rejection of claim 5 should be overturned.

C.   Whether *Burnhouse* in view of *Arsenault* discloses the limitation of claim 4, "wherein said one or more folders associated with said one or more classifications for said plurality of television stations on said display are displayed according to a base set if there are no differences between said list of one or more classifications associated with said plurality of television stations and said tags".

The Examiner states:

> Applicant further notes that Figures 3 and 5 do not disclose displaying television stations according to a base set. Applicant further notes that Figures 3 and 5 do not disclose displaying according to a base set if there are no differences between the list of one or more classifications associated with the plurality of television station sand the tags. Burnhouse discloses receiving program guide data that includes category and subcategory information (see Figures 3-4), which upon receipt, stores the program guide data in a database including pointers to the category and subcategory information (see Paragraph 0036). Once the program guide data is stored, the viewer may access the program guide data for display in an electronic program guide illustrated in Figures 9-10. Once the electronic program guides of Figures 9 and 10 are accessed, the system makes a comparison with the stored television programs in the database to determine which programs to display to viewer based on the category and subcategory tags stored in the database (see Paragraph 0062). Therefore, the stored EPG data (with pointers) are used to display a base set, wherein a base set is any category or subcategory where each television program resides and used to access a list of television programs corresponding to the selected category and subcategory.

Examiner's Answer, page 13.

A close reading of the Examiner's argument shows that it is the same argument set forth and discussed in Section A above. However, the Examiner draws a new conclusion from the cited art. Thus, the statement that [t]herefore, the stored EPG data (with pointers) are used to display a base set, wherein a base set is any category or subcategory where each television program resides and used to access a list of television programs corresponding to the selected category and subcategory" is false because the conclusion is based on an incorrect analysis of Burnhouse as discussed above in Section A.

The Examiner further states:

> Further, Arsenault teaches that if there are differences between a list of
> classifications associated with television stations and the tags, creating a new base
> set (content record). Alternatively, if there are no differences between said list of
> one or more classifications associated with said plurality of television stations and
> said tags, adding the content record to an existing base set (Column 7, Lines 55-
> 59), which is displayed to the view when an EPG is requested by the viewer (see
> Column 1, Lines 61 -64).

Examiner's Answer, page 13-14.

As can be seen by studying the cited portion of Arsenault in Section B above, Arsenault is silent as to an explicit disclosure of the claim element. Furthermore, Arsenault cannot provide an inherent disclosure because, individually or in combination with Burnhouse, the cited art can only be used to argue possibilities. Therefore, the cited art cannot show that the claim limitation necessarily follows from the teachings of the references.

D.   Whether *Arsenault* and *Burnhouse* are properly combined

The Examiner states:

> Applicant further notes that the Examiner has not provided any basis in fact
> and/or technical reasoning to support the assertion that a "base set", as defined in
> Appellants' Specification, refers to a category and that a "specific set", which is
> not used in Appellants' Specification, refers to a sub-category. The Examiner
> notes that the term "base set" has been used in the specification to state the
> collection of programs stored in a database and displayed to the viewer after all
> the received tags have been processed. The Examiner notes that both Burnhouse
> and Arsenault both disclose a base set, as discussed above. Burnhouse teaches a
> base set in regards to the EPG data stored in the database that refers to a particular
> category/subcategory (where each category/subcategory represents a different base
> set). Arsenault teaches a similar database that contains multiple sets classified

according to various attributes (see above). The Examiner further notes that this interpretation is consistent with Applicant's use of the term "base set" in applicant's specification.

Examiner's Answer, page 14.

As can be seen by studying the cited portion of Burnhouse and Arsenault in Sections A and B above, Arsenault and Burnhouse are silent as to an explicit disclosure of the claim elements. Furthermore, Arsenault and Burnhouse cannot provide an inherent disclosure because, individually or in combination, the cited art can only be used to argue possibilities. Therefore, the cited art cannot show that the claim limitation necessarily follows from the teachings of the references.

E.   Claim 6: The Examiner, in response to Appellants' brief, has allowed claim 6.

The Examiner states:

> In regards to Applicant's arguments, the examiner notes that the rejection has been withdrawn and claim 6 is now objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims (see updated rejection above). Examiner's Answer, page 15.

F.   Whether *Burnhouse* in view of *Arsenault* and *Rashkovskiy* disclose the limitation of claim 8, "receiving input to add or delete an indication associated with a particular television station associated with a particular folder; and adding or deleting said indication associated with said particular television station associated with said particular folder".

The Examiner states:

> As stated in the previous Office Action Rashkovskiy discloses selection of a favorite program or group of favorite programs (see Paragraph 0020), which teaches receiving input to add an indication associated with a particular television station associated with a particular folder and as a result of the selection, adding favorite programs to the folder.

Examiner's Answer, page 15.

The cited portion of Rashkovskiy is set forth below:

> [0020] In the illustration shown in FIG. 1, the user has selected the current icon 12c and the favorites subcategory icon 14/, both of which are highlighted. Thus, the user has selected favorite programs that are currently available in the

illustrated example. The basis for defining favorites may be extremely varied. The user may simply enter what the user decides at any given instance of time, such as any given day of the week, are his or her favorite programs. As another example, the system can automatically discern what are the favorite programs based on how frequently the user views a given program over varying time periods.

The Examiner argued Rashkovskiy [0020] in the Final Office Action, and the Examiner has merely restated his reference here. As can be seen by studying the cited portion of Rashkovskiy, Rashkovskiy, Arsenault and Burnhouse, individually or in combination, are silent as to an explicit disclosure of the elements of claim 8. Furthermore, Rashkovskiy, Arsenault and Burnhouse cannot provide an inherent disclosure because, individually or in combination, the cited art can only be used to argue possibilities. Therefore, the cited art cannot show that the claim limitation necessarily follows from the teachings of the references.

CONCLUSION

As shown above, and in Appellants' main brief, the Examiner has failed to state valid rejections against the claim. Therefore, Appellants request that the Board of Patent Appeals and Interferences reverse the rejections. Additionally, Appellants request that the Board direct the Examiner to allow the claim.

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